IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2060 of 2004

Suryadarshan Co-op. Housing Society
Ltd.....Petitioners

Versus

State of Maharashtra & Ors.....Respondents

Mr. D.J. Khambatta with Mr. R.I. Chagla i/b.
Mohammedbhai & Co., for the Petitioner
Mr. Niranjan Pandit, AGP for Respondents

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 25th April,2005

. Rule. Heard forthwith.

2. The limited issue which arises in this petition is the demand made by the respondent No.2 on the petitioners. It is the case of the petitioners that on account of the demand made Respondent No.2 has refused to sign Annexure II which is to recommend names of the eligible persons which will be finally approved by the S.R.A. According to the petitioners in terms of the calculations which they have worked out the 3 petitioners have to pay totally a sum of Rs.4,49,549/-.

3. In so far as the Respondent No.2 is concerned, their learned Counsel points out that there are lease agreements. In terms of lease Agreements each occupier had to pay an instalment per month. On failure to pay the instalment there was a late fee. It is submitted that late fee is continues and chargeable every month until the instalment is paid. Based upon that as per their calculation the total amount due and payable is Rs.44,42,592/-.

4. On behalf of the petitioners it is pointed out that

the respondent No.2 themselves had reduced the said amount to Rs.29,01,503/- in terms of the demand made on 20th December, 2002. Learned Counsel for Respondent No.2 points out that the subsequent demand was based upon a resolution of respondent No.2 which the petitioners have not availed of and in these circumstances the amount payable is which is reflected in the earlier demand made on 19th July, 2004.

5. Considering the controversy the Prothonotary & Senior Master is directed to appoint a Chartered Accountant from the Panel maintained by this Court to work out the amounts due and payable in terms of the lease agreements between the petitioners and the Respondent No.2. The said amount as worked out by the Chartered Accountant will be paid by the petitioners to respondent No.2 within four weeks of the order of the Chartered Accountant whereupon the respondent NO.2 shall give the necessary permission in Annexure II as applied for by the petitioners. That would be subject to the rights of the parties if they are aggrieved by the order of the Chartered Accountant. It will be open to the Chartered Accountant while fixing the amount including charging of late fees to consider the terms of the lease agreement and work out the amount due based on his interpretation.

6. In so far as the reduction in the amount is concerned, it will be open to the petitioners to raise the issue on the respondent No.2 and it is for the respondent No.2 to consider the same and dispose it of according to law.

7. The Chartered Accountant on his appointment to complete the entire exercise within a period of 45 days. It

will be open to both the parties to appear before the Chartered Accountant and place their material for consdieration whilst computing the amount.

8. Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)

(S.P. KUKDAY, J.)